IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.3189 OF 2002
AND
WPMP.NO.4488 OF 2002

BCG Vaccine Laboratory,
Guindy, Chennai 32.
rep. by its Director .. Petitioner

-Vs-

Committee for the purpose of
Control and Supervision of Experiment
on animals (CPCSEA), Animal Welfare
and Division, Ministry of Social
Justice and Empowerment,
No.3, Seaward Road,
Valmiki Nagar, Tiruvanmiyur,
Chennai 600 041. .. Respondent

Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.S. Rajeswaran

For Respondent : Mr.P.N. Prakash

:J U D G M E N T

This writ petition has been filed by BCG Vaccine Laboratory against the Committee for the purpose of Control and Supervision of Experiment on Animals, hereinafter referred to CPCSEA. The petitioner and the respondent are organisations under the Central Government, the former under the Ministry of Health and Family Welfare, the latter under the Ministry of Social Justice and Empowerment. Prayer is for quashing the Letter No.CPCSEA/OrG/CH.2002/302 dated 30.1.2002, whereunder the expert consultant of CPCSEA has advised the petitioner to suspend all the animal experiments immediately.

2. The petitioner laboratory under the Directorate of Health Services has been established for manufacturing Freeze Dried BCG Vaccine for the control of childhood Tuberculosis and Tuberculosis Meningitis in children through the Expanded Programme of Immunizatiion, in short EPI, of the Government of India. The laboratory also functions as National Quality

Control Laboratory for BCG Vaccine and g of imported BCG Vaccines. Laboratory has been established since May, 1948. BCG Vaccine produced in such laboratory is tested on guinea pigs, supposed to be the only animal susceptible to Tuberculosis. The Laboratory breeds guinea pigs for its use. If on testing sometimes sign of tuberculosis is traced, production is required to be stopped and the matter has to be intimated to the Ministry. The petitioner laboratory has been registered under Rule 5(a) of the Breeding of and Experiment of Animals (Control & Supervision) Rules, 1998 having Registration No.35 8.01.C/CPCSEA. The respondent Committee as apparent from the counter filed by the respondent, has been statutorily constituted by the Government of India in exercise of the power conferred under Section 17 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as PCA Act).

3. It is stated by the petitioner that on 5.2.2001, a nominee of the respondent Committee had visited the laboratory after due notice and had inspected the animals and the Animal House maintenance. It is asserted that the person who has visited the laboratory was satisfied with the entire process. It is further asserted that on 25.1.2002, one Sri. Badrinath, claiming to be the representative of the respondent Committee came to the laboratory without any prior notice and visited the Animal House and inspected the animals along with one staff employed in the laboratory. It is stated that he had orally instructed that a Veterinarian from the Institutional Animal Ethics Committee would have to inspect and issue a certificate about the health status of the animals which should be forwarded to the committee before 31.1.2002. It is further asserted that pursuant to the aforesaid advice, one Dr. Jayanthi Kannan Babu, Veterinarian of the Institutional Animal Ethics Committee visited the laboratory and the Animal House on 2 9.1.2002 and submitted a certificate dated 29.1.2002 indicating that the animals are maintained in good health. Such certificate was forwarded to the respondent. It appears that in the meantime, the Director of Laboratory, sent a letter to the Member Secretary of the respondent along with a copy to the respondent raising certain objections regarding the manner of inspection. The impugned letter is apparently a reply to such a letter of the Director. In the impugned letter, inter alia it is indicated that mortality rate of 25% is not acceptable and the petitioner was required to submit all details and also submit health monitoring report. In conclusion, it was indicated that . . . You are advised to immediately suspend all animal experiments, screen the animals and submit a health certificate from the appropriate authority. As already indicated the prayer in the writ petition is to quash the same. Further prayer is for a direction to the respondent to depute any qualified Veterinarian from the approved Government Agency to examine the guinea pigs for the purpose of ensuring viral and bacterial infections as quoted by the respondent.

4. A detailed counter affidavit has been filed on behalf of the respondent explaining that such surprise visit is contemplated and indicating that the objections raised were valid.

5. A rejoinder affidavit has been filed by the petitioner refuting the contentions raised in the counter affidavit.

6. The main grievance of the petitioner is, apart from the manner of inspection, the direction in the letter to suspend all animal experiments. To consider this aspect, it is necessary to refer to the relevant provisions contained in the P.C.A. Act. The said Act has been enacted to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals.

Chapter II relates to establishment of Animal Welfare Board of India. Chapter III relates to cruelty to animals generally. Chapter IV relates to experimentation of animals. Section 14 provides :
 14. Nothing contained in this Act shall render unlawful the performance of experiments (including experiments involving operations) on animals for the purpose of advancement by new discovery of physiological knowledge or of knowledge which will be useful for saving or for prolonging life or alleviating suffering or for combating any disease, whether of human beings, animals or plants.

A perusal of Section 14 thus makes it clear that testing which is carried on by the petitioner is not prohibited.
Section 15(1) provides for constituting a Committee for the purpose of controlling and supervising experiments on animals. As a matter of fact, the respondent Committee has been so constituted. Section 15 A empowers the Committee to constitute as many as Sub-committees as it thinks fit for exercising any power or discharging any duty of the Committee or for inquiring into or reporting and advising on any matter which the Committee may refer. Section 17 relates to duties of the Committee and power of the Committee to make rules relating to experiments on animals. Section 17(1) is to the following effect :-

 17(1) It shall be the duty of the committee to take all such measures as may be necessary to ensure that animals are not subjected to unnecessary pain or suffering before, during or after the performance of experiments on them, and for that purpose it may, by notification in the Gazette of India and subject to the condition of previous publication, make such rules as it may think fit in relation to the conduct of such experiments.

Section 17(1A) is the rule making power and it is extracted hereunder :

 17(1A) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the following matters namely:-

(a) the registration of persons or institutions carrying on experiments on animals;

(b) the reports and other information which shall be forwarded to the Committee by persons and institutions carrying on experiments on animals.

From the aforesaid provisions, it is apparent that the committee has the jurisdiction to take measures to ensure that the animals are not subjected to unnecessary pain. The Rules can be framed regarding carrying on experiments.

7. Section 19 relates to power to prohibit experiments on animals and it is extracted hereunder :

"19. If the Committee is satisfied, on the report of any officer or other person made to it as a result of any inspection under section 1 8 or otherwise, that the rules made by it under section 17 are not being animals, the Committee may, after giving an opportunity to the person or institution carrying on experiments on animals; the Committee may, after giving an opportunity to the person or institution of being heard in the matter, by order, prohibit the person or institution from carrying on any such experiments either for a specified period or indefinitely, or may allow the person or institution to carry on such experiments subject to such special conditions as the Committee may think fit to impose."

A perusal of the aforesaid provision makes it clear that the Committee can prohibit a person or institution to carry on any such experiments, such one to a specific period or indefinitely. The Committee may also allow the person or institution to carry on experiments subject to special conditions as the Committee may think fit to impose.

8. Section 20 provides for penalties and it is extracted hereunder:

"20. If any person-
(a) contravenes any order made by the Committee under section 19; or

(b) commits a breach of any condition imposed by the Committee under that section:

he shall be punishable with fine which may extend to two hundred rupees, and, when the contravention or breach of condition has taken place in any institution the person in charge of the institution shall be deemed to be guilty of the offence and shall be punishable accordingly."

9. In the aforesaid background of statutory provisions, the validity of the letter has to be considered. The petitioner and the respondent have raised various technical aspects relating to experiments. It is unnecessary to deal with those aspects, firstly because those aspects are not necessary for disposal of the case and secondly because, possibly, the court would not be in a position to deal with the matter and such matters are best left to the experts and scientists.

10. In the present case, even though the provision under

which the power has been exercised has not been indicated, one can only trace such power to Section 19 of the PCA Act. Apart from Section 19, there appears to be no other provision. Nothing has been brought to my notice that any such power is vested under any other provision or any other rules. Section 19, which has already been extracted, gives certain powers for issuing order of prohibition. Section 20 makes contravention of any order passed under Section 19 punishable. Since breach of direction under Section 19 is punishable, it is obvious that the provisions contained in Section 19 has to be interpreted strictly. Section 19 itself envisages that prohibition can be for a specified period or indefinitely. In the present case, the letter simply says that the petitioner is required to suspend all animal experiments. Apparently this would amount to prohibition for an indefinite period. Whether the prohibition is for a specified period or unspecified period, it is necessary that before issuing such direction, opportunity must be given to the person or the institution concerned. This is apparent from the provisions contained in Section 19 itself. In the present case, it is not disputed that before issuing the impugned order no opportunity has been given to the petitioner. It is of course true that the impugned letter has been issued pursuant to a letter written by the Director himself of the petitioner laboratory, but that does not mean that an opportunity had been given as contemplated under Section 19. On this ground alone, the impugned letter is liable to be quashed.

11. Apart from the above, it is apparent that the direction is to be issued by the Committee. In the present case, the letter, even though in the official pad of CPCSEA,has been signed and sent by expert consultant of CPCSEA,Chennai. By no stretch of imagination it can be said that the expert consultant of CPCSEA has authority to take any decision on behalf of the Committee. Even though such an expert may be a member of such Committee, the decision is to be taken and the direction is to be given by the Committee. It is of course true that the Committee has power to form Sub-committees and even a single member may be a Sub-committee, but the power under Section 19 can be exercised only by the Committee and not by any Subcommittee or any individual being a member of the Committee or the Sub-committee. Examined in the light of the aforesaid aspect, it is obvious that the letter issued to the petitioner cannot be construed as a direction contemplated under Section 19 of the Act.

12. The petitioner has also raised objections regarding the manner of inspection. Section 18 contains the power of entry and inspection and it is quoted hereunder :-

 18. For the purpose of ensuring that the rules made by it are being complied with the Committee may authorise any of its officers or any other person in writing to inspect any institution or place where experiments are being carried on and report to it as a result of such inspection, and any officer or person so authorised may-

(a) enter at any time considered reasonable by him and inspect any institution or place in which experiments ion animals are being carried on; and

(b) require any person to produce any record kept by him with respect to experiments on animals.

13. For the purpose of deciding the present case, it is unnecessary to delve into the question raised by the petitioner and the respondent. Suffice to say, if, in future any occasion arises for inspection,

the provisions contained in Section 18 should be kept in view and only a person authorised in writing by the Committee can inspect any institution or place where experiment is carried on.

14. For the aforesaid reasons, the writ petition is allowed. No costs. However, it is made clear that the order passed in the present writ petition would not stand in the way of the respondent in taking any action in accordance with law as contemplated in the Prevention of Cruelty to Animals Act, 1960. It is made clear that except the questions specifically decided, all other questions raised in the writ petition are left open. Consequently, WPMP.No.4488 of 2002 is closed.

Index : Yes
Internet : Yes
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To

Committee for the purpose of
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on animals (CPCSEA), Animal Welfare
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No.3, Seaward Road,
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